

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

GARRETT LOOMIS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:19-cv-1009
)	
AMERISTAR CASINO KANSAS)	
CITY, LLC, JOHN DOE 1, and)	
JOHN DOE 2,)	
)	
)	
Defendants.)	

**DEFENDANT AMERISTAR CASINO KANSAS CITY, LLC’S MOTION TO DISMISS
PLAINTIFF’S PETITION**

Defendant Ameristar Casino Kansas City, LLC (“Ameristar” or “Defendant”), by and through its undersigned counsel, moves the Court to dismiss Plaintiff’s Amended Petition for Damages with prejudice pursuant to Rules 12(b)(4), 12(b)(5), 12(b)(6), and 41(b) of the Federal Rules of Civil Procedure.

Plaintiff filed his Petition his Petition on May 28, 2019. Under Missouri law, process must be served within thirty days, or, with leave of the court, within 60 additional days. M. Sup. Ct. R. 54.21. Plaintiff did not attempt to serve the summons until November 14, 2019, when he served Defendant with an invalid expired summons. Four days later, on November 18, 2019, or 174 days after filing his Petition, Plaintiff served an invalid alias summons addressed to the wrong party, Ameristar Casino Kansas City, Inc. Even if the summonses had otherwise been valid, Plaintiff’s service was untimely as it exceeded the maximum allowable extension of 60 days (although Plaintiff never requested any extension). Accordingly, Plaintiff’s claims should

be dismissed for failure to prosecute under Fed. R. Civ. P. 41(b), insufficient process under Fed. R. Civ. P. 12(b)(4), and insufficient service of process under Fed. R. Civ. P. 12(b)(5).

Additionally, Plaintiff's claims should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim because Plaintiff fails to allege any discriminatory intent by Ameristar as required under Mo. Rev. Stat. § 213.010. In support of its Motion to Dismiss, Ameristar is contemporaneously filing Suggestions in Support, which Ameristar incorporates herein.

WHEREFORE, Ameristar respectfully requests the Court enter an order granting Ameristar's motion to dismiss with prejudice and awarding such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Phillip C. Thompson

Kyle B. Russell, MO Bar # 52660

Phillip C. Thompson, MO Bar # 69915

JACKSON LEWIS P.C.

7101 College Blvd, Suite 1200

Overland Park, KS 66210

Telephone: (913) 981-1018

Facsimile: (913) 981-1019

Kyle.Russell@jacksonlewis.com

Phillip.Thompson@jacksonlewis.com

ATTORNEYS FOR DEFENDANT

AMERISTAR CASINO KANSAS CITY, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of December 2019, a true and accurate copy of the above and foregoing was filed electronically via the Court's CM/ECF electronic filing system to the following counsel of record:

Kirk D. Holman
HOLMAN SCHIAVONE, LLC
4600 Madison Avenue, Suite 810
Kansas City, MO 64112
kholman@hslawllc.com

ATTORNEY FOR PLAINTIFF

/s/ Phillip C. Thompson
AN ATTORNEY FOR DEFENDANT
AMERISTAR CASINO KANSAS CITY, LLC

4819-6897-6303, v. 1